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February 18, 2025

Oliver et al. v. American Express Company et al.
Case No. 1:19-cv-00566 (NGG)(JRC)

Dear Judge Garaufis:

On February 5, 2025, the Court set the trial schedule for the above-captioned matter, with the pretrial conference scheduled for September 18, 2025 and trial scheduled to begin on October 6, 2025.

I am lead trial counsel in this matter. However, I am also lead trial counsel in *Kupfner et al. v. Xcel Energy Inc. et al.*, Case No. 2022-CV-030195 (Colo. Dist. Ct.), and there will be an 8-week trial in that case that will begin on September 26, 2025. American Express therefore respectfully requests a continuance of the trial date in this case until November 24, 2025 or any date thereafter that is convenient for the Court. This is American Express's first request for a continuance of the trial date.

Plaintiffs oppose this request, claiming that the delay is unjustified because "just one attorney's scheduling conflict cannot govern the timing of trial of this action" and pushing the trial to the "holiday period" at the end of 2025 would "unnecessary[ly] burden [the] class representatives" and might conflict with Plaintiffs' expert's (Dr. Russell Lamb's) availability. Respectfully, each of these arguments fall short.

As an initial matter, Plaintiffs are significantly downplaying the prejudice to Amex that would result if Amex's lead counsel is unable to present Amex's defense at trial. The right to counsel of one's choosing is a "bedrock" principle that should not be violated without strong justification. *See United States v. Johnson*, 117 F.4th 28, 41 (2d Cir. 2024); *Evans v. Artek Sys. Corp.*, 715 F.2d 788, 791 (2d Cir. 1983). Plaintiffs' only proffered bases for their refusal lack merit. Moving the trial date would not "burden" the class representatives because Amex has not proposed any particular new date. Presumably, dates can be selected that do not interfere with the holidays or holiday plans. For the same reason, there is no real issue with selecting trial dates that comport with Dr. Lamb's availability, which Plaintiffs have not yet even attempted to ascertain. At bottom, Plaintiffs seek to handicap Amex by forcing it to proceed to trial without a

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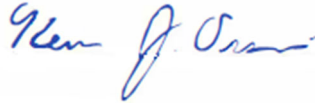
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key member of the trial team. Amex therefore respectfully requests a new trial date that begins at this Court's convenience on or after November 24, 2025.

Respectfully,



Kevin J. Orsini

Hon. Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Copy to:

All Counsel of Record

VIA ECF